

Notice of Allowability

Application No.

10/630,923

Examiner

Sandra M. Nolan-Rayford

Applicant(s)

HOERNER ET AL.

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the 18 January 2005.
2. ☒ The allowed claim(s) is/are 1-19 and 23-27.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

S. M. Nolan-Rayford
SANDRA NOLAN RAYFORD
PRIMARY EXAMINER

WITHDRAWAL OF FINAL ACTION

1. The final office action dated 25 April 2005 has been withdrawn in favor of the following action:

REASONS FOR ALLOWANCE

2. The following is an examiner's statement of reasons for allowance:
3. The sole base claim of the application, claim 1, can be summarized as follows:

Claim 1 covers s multilayer elastomeric material comprising:

at least two outermost elastomeric barrier layers L_1 and L_3 , having respective breaking stresses of σ_1 and σ_3 , thicknesses e_1 and e_3 and elastic constants E_1 and E_3 , with L_1 and L_3 enclosing at least one elastomeric layer L_2 , which layer L_2 consists of an elastomeric matrix comprising a dispersion of droplets of at least one composition that contains one or more active substances, wherein L_2 has a breaking stress σ_{2Tot} , a thickness e_2 and elastic constant E_2 , wherein the mean diameter of the droplets is at least $10\mu m$ and the material satisfies the double inequality (I):

$$(\sigma_{2Tot}e_2) < (\sigma_1e_1) \text{ and } (\sigma_{2Tot}e_2) < (\sigma_3e_3) \quad (I),$$

in which:

σ_{2Tot} is the breaking stress of the charged elastomeric material constituting L_2 , and wherein σ_1 , σ_3 , e_1 , e_1 and e_3 , are defined above.

Note: The term "charged" is interpreted as referring to the fact that layer L_2 contains, or is charged with, at least one active substance.

4. The prior art of record fails to teach or suggest multilayer materials in which three layers contain materials that are positioned as stated in claim 1 and selected so that their properties satisfy claim 1's inequalities.

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5. Upon reconsideration, the 35 USC 103 rejections set out in sections 7 and 8 of the Final Rejection dated 25 April 2005 are withdrawn. The examiner is now persuaded by the arguments made on pages 8-10 of the 18 January 2005 response, especially those regarding examples 1 and 3 in the specification.

6. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Pregrant Publication

7. The pregrant publication for this application is cited on the enclosed citation form.

Conclusion

Any inquiry concerning this communication should be addressed to Sandra M. Nolan-Rayford, at telephone number 571/272-1495. She can be reached Monday through Thursday, from 6:30 am to 4:00 pm, ET.

If attempts to reach the examiner are unsuccessful, contact her supervisor, Harold Pyon, at 571/272-1498.

The fax number for patent application documents is 703/872-9306.

S.M. Nolan-Rayford
S. M. Nolan-Rayford
Primary Examiner
Technology Center 1700

10630923(20050531)

**SANDRA NOLAN RAYFORD
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